

In response to requests from the California Department of Food and Agriculture and the California Horse Council, the Department of Conservation proposes the following clarification of the California Land Conservation Act of 1965, otherwise known as the Williamson Act. (Gov. Code, §§ 51200 et seq.)

The Department of Food and Agriculture is the State agency mandated to execute the provisions of the California Food and Agricultural Code, and is statutorily required to promote and protect the agricultural industry of this State. (Food & Agr. Code, §§ 401 & 404) The Department of Food and Agriculture has asserted the equine industry is within its regulatory mandate.

The Department of Food and Agriculture has forwarded to the Department of Conservation a request for clarification from the State's commercial equine industry, as represented by the California Horse Council, a private organization. That request is supported by the California Department of Food and Agriculture. The request specifically seeks clarification that commercial breeding and training, including training for racing, of horses constitutes commercial agricultural use of property.

The following clarification is being proposed as a matter of policy, in the exercise of discretion and general delegation, to the Department of Conservation of administrative responsibility for the Williamson Act and Open Space Subvention Act.

WHEREAS:

1. The breeding of horses has historically and culturally been conducted by farmers and ranchers in support of their agricultural operations.
2. In addition to farmers' and ranchers' breeding of their own horses, there is a long history and tradition in this State and nation recognizing the commercial breeding, including training and racing, of horses as an agricultural activity.
3. The horse breeding industry utilizes management of land, water, and feed as do other agricultural enterprises.
4. For purposes of the Williamson Act, it is only the recent changes in the state Penal Code, eliminating horses from being used as crop for human food, which distinguishes production of horses from production of those other "farm animals" that are generally and traditionally recognized as commercial agricultural products.
5. The horse breeding industry provides a product regularly traded in the market and, therefore, constitutes a commercial operation.
6. The Department of Food and Agriculture has been vested with authority to inspect and regulate the equine livestock industry, and to interpret and implement the California Food and Agricultural Code, which includes definitions of the term "agriculture" as it is used in this State; and the Department of Food and Agriculture, and its Equine Advisory Task Force support the California Horse Council's request for inclusion of commercial horse breeding and training within coverage of the Williamson Act, which coverage is limited to agricultural uses for the purpose of producing agricultural commodities for commercial purposes.

POLICY:

For the reasons stated in 1 through 6 above, the breeding and training of horses for commercial sale may be considered, by local agencies, in their local rules and contracts, to be "producing an agricultural commodity for commercial purposes" pursuant to Government Code section 51201, subdivision (b). As with all statutory provisions and State interpretation, local agencies are free to implement the Williamson Act more restrictively, and may, therefore, adopt local rules or enter contracts that do not allow or limit commercial horse breeding activities or allow those uses as compatible activities.

For the reasons stated in 1 through 6 above, a facility dedicated to the commercial breeding and training of horses, including training for racing, may constitute an "agricultural use" of the land for purposes of subdivision (b) of section 51201 of the Government Code. But, as noted above, as with all statutory provisions and State interpretation, local agencies are free to implement the Williamson Act more restrictively, and may, therefore, adopt local rules or enter into contracts that do not allow, or limit commercial horse breeding activities or compatible activities.

To be "devoted to agricultural use" and, therefore, qualify for a Williamson Act contract as required by section 51242, subdivision (a) of the Government Code, the primary function of a commercial horse breeding or training facility must be commercial horse breeding or training for sale. Occasional sale or training as a secondary activity on the property shall not constitute commercial agricultural activity and qualify for inclusion as an agricultural use under this policy. Proof that horse breeding or training for sale is the primary function may include, but is not limited to, evidence that breeding or training for sale is the source of revenue or income to cover the cost(s) of the operation. Lack of such income or only occasional income can be evidence that the primary function is not commercial in nature.

In further clarification, recognition of commercial horse breeding and training facilities as a commercial agricultural operation and use of the land does not eliminate or in any way vitiate the principles of compatibility applicable to Williamson Act lands or any other requirements of the Act. Therefore, any ancillary uses or buildings cannot significantly compromise the long-term productive agricultural capability, or significantly displace or impair current or reasonably foreseeable agricultural operations on the parcel, or cause significant removal of adjacent land from agricultural use, as provided by Government Code section 51238.1. However, some ancillary uses may be allowed, such as veterinary activities for the horses being bred or trained on-site. Similarly, it is within the local agency's discretion to include the rehabilitation of (a) horse(s) from injury to be within the greater scope of a breeding or training facility. The local agency is advised to use its discretion carefully when considering ancillary uses; while allowing one retired, or non-commercially bred horse to be kept may not displace commercial breeding operations, local agencies cannot allow violations of the Williamson Act or local rules or

contracts without subjecting the county or landowner to potential enforcement actions from the Department of Conservation or other landowners.

Since no reason has been provided to support a finding that the commercial viability of the breeding and training of horses is determined by the prime characteristics or carrying capacity of the land, the Department suggests that these operations are analogous to the agricultural use of non-prime soils and should be treated as such for the purposes of the Williamson Act. Consistent with the purpose of the Williamson Act to protect both agricultural land and open space, it is the Department's policy to strictly construe the legislative presumption codified in Government Code section 51222.

The policy stated herein does not allow commercial or non-commercial boarding or riding facilities, stables, equestrian centers, show arenas or event centers, or other similar facilities or operations that are not exactly equivalent to the breeding and training operations to be considered an "agricultural use" as described herein. Furthermore, the Williamson Act has been universally interpreted by the Department of Conservation to require some underlying "agricultural use" presently occurring on the property for any other non-agricultural uses to be "compatible" with the "agricultural use."

Nor does the policy stated herein allow the keeping, boarding, training, or other use of horses—or any other animals for personal use—to constitute an agricultural use for purposes of the Williamson Act.

In addition to general authority granted or delegated to the Department of Conservation, this policy is adopted pursuant to the specific authority expressly codified in Government Code section 51206 which states:

"The Department of Conservation may meet with and assist local, regional, State, and federal agencies, organizations, landowners, or any other person or entity in the interpretation of this chapter. The department may research, publish, and disseminate information regarding the policies, purposes, procedures, administration, and implementation of this chapter. This section shall be liberally construed to permit the department to advise any interested person or entity regarding this chapter."

The foregoing policy of the Department of Conservation is offered for clarification of the Williamson Act. This policy and any other guidance from the Department regarding the Act is limited by, and does not expand upon, the statutes and by case law interpreting the Act.